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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the right to food, Hilal Elver*

Access to justice and the right to food: the way forward

Summary

In the present report, submitted to the Human Rights Council in accordance with its resolution 22/9, the Special Rapporteur on the right to food explores the obstacles faced by those wishing to seek remedy for violations related to the right to food by analysing the current international legal framework, and identifying examples of good practice as a means of encouraging States to develop judicial remedies in accordance with the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The report also addresses some issues related to extraterritorial obligations in relation to the right to food.

* Late submission.

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I. Introduction

1. In her first annual report submitted to the Human Rights Council in accordance with resolution 22/9, the Special Rapporteur on the right to food explores the obstacles faced by those wishing to seek remedy for violations related to the right to food by analysing the current international legal framework, and identifying examples of good practice as a means of encouraging States to develop judicial remedies in accordance with the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The report will also examine the question of extraterritorial implementation in relation to the justiciability of the right to food. This report will build on the work of the Special Rapporteur's predecessors in this area.[1]

II. International legal framework

A. Overview

2. The right to food was first recognized in article 25 of the Universal Declaration of Human Rights. Since then it has been recognized in a number of international instruments, with the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant") representing the most significant treaty on the right to food. The Covenant (to date ratified by 162 States) has been vital in shaping and developing the normative framework on the right to food. The treaty defines the right to food as a distinct and fundamental right to be free from hunger and to have sustainable access to food (art. 11). It outlines specific obligations for all States parties to take measures to progressively attain the full realization of the right to food.

3. In the wake of the momentum generated by the 1996 World Food Summit,[2] which highlighted the need to further "clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger",[3] the Committee on Economic, Social and Cultural Rights in 1999 adopted general comment No. 12 on the right to adequate food (hereinafter, "general comment No. 12") which clarifies the implications of three levels of State obligation, including the obligation to respect, protect and fulfil (paras. 14 and 15).

4. In addition to legally binding treaties, the right to food has also been enunciated in various international standards, the most significant of which are the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (Right to Food Guidelines). The Right to Food Guidelines were developed as a practical tool for States to assist them in implementing their obligations at the domestic level under article 11 of the Covenant. The year 2014 marked the tenth anniversary of the guidelines and provided an opportunity to evaluate the impact thereof on national implementation. The present report will highlight some examples of good practice in that regard.

5. While some critics suggest that the voluntary nature of the Right to Food Guidelines limits their usefulness, they were adopted by member States of the Food and Agriculture

[1] See references in the reports of the former Special Rapporteurs, Jean Ziegler (E/CN.4/2002/58) and Olivier De Schutter (A/68/288).

[2] See Rome Declaration on World Food Security.

[3] 1996 World Food Summit Plan of Action, objective 7.4.

Organization (FAO) by consensus. States cannot therefore claim to be unaware of or refuse to comply with the guidelines. Over the years, in many formal settings, the Governments have reiterated their commitment to and support for the guidelines.

B. A new era: adoption of the Optional Protocol and access to justice

6. The interdependence and indivisibility of economic, social and cultural rights and civil and political rights have long been asserted within international law, yet in practice economic, social and cultural rights have typically been relegated to second place within the international framework, with civil and political rights taking centre stage, particularly when it comes to implementation. While the International Covenant on Civil and Political Rights includes an explicit provision requiring States "to develop the possibilities of judicial remedy" (art. 2, para. 3 (b)), no such specific provision is explicitly mentioned in the International Covenant on Economic, Social and Cultural Rights. It should be noted, however, that the Committee has clarified that the obligation under article 2, paragraph 1, of the Covenant to "take steps ... by all appropriate means" includes the provision of judicial remedies.[4]

7. The reluctance of a number of States to recognize that economic, social and cultural rights are justiciable has done much to propagate unfounded misconceptions thereon. Those countries opposed to the justiciability of those rights argue that such a notion may interfere with State sovereignty[5] claiming that it is inappropriate for courts to adjudicate on social and economic policy. There is also a perception that social and economic rights set forth political objectives and are too vague to be enforceable.[6] The suggestion that these rights are resource-dependent and cannot be satisfied where there is a lack of capital, and the idea that these rights only impose positive obligations on States and civil and political rights give rise to negative ones, has also led to resistance from some States.

8. The justiciability debate continues to provoke controversy at the international level. However despite strong opposition from a number of States an Optional Protocol to the Covenant, establishing an individual complaints procedure, was finally adopted in 2008. Its subsequent entry into force in May 2013 was hailed as "potentially one of the most important developments in human rights protection at the UN level in a generation".[7]

9. The Optional Protocol is intended to complement rather than replace national legal systems and should not be considered as the principal means of seeking justice. The Optional Protocol grants individuals, or groups of individuals under the jurisdiction of a State party, the right to submit communications about alleged violations of any economic, social or cultural right to the Committee on Economic, Social and Cultural Rights (art. 2).[8]

10. Article 2 of the Optional Protocol requires that authors of communications must be under the jurisdiction of the State party responsible for the violation, and that the State must have ratified both the Covenant and the Optional Protocol. However, the Covenant indicates no restriction to territorial jurisdiction and it will remain to be seen whether the

[4] General comment No. 3 on the nature of States parties' obligations, para. 5.

[5] George Kent, *Freedom from Want: The Human Right to Adequate Food* (Georgetown University Press, Washington, D.C., 2008).

[6] International NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, "Celebration of the Entry into Force of the OP-ICESCR", 2013.

[7] Ibid.

[8] The development of a communication process encompassing all economic, social and cultural rights represents an innovative approach to ensuring remedy for victims of violations.

cases to be examined under the Optional Protocol concentrate principally on the territorial link.[9]

11. Victims of violations now have a means of making effective appeals through an international mechanism, once they have exhausted the grievance mechanisms within their own countries, or if there is an excessive delay in processing their claims through national procedures. The Optional Protocol also provides for interim measures for victims in exceptional circumstances in order to prevent irreparable damage to victims (art. 5).

12. The Optional Protocol also permits States to declare that they recognize the competence of the Committee on Economic, Social and Cultural Rights to review inter-State communications in cases where one State party considers that another State party has failed to fulfil its obligations under the Covenant. The Committee may also have recourse to an inquiry procedure whereby it would consider allegations from reliable sources indicating grave or systematic violations by a State party of any of the rights set forth in the Covenant.[10] While the Covenant does not have a mechanism to enforce decisions, findings and decisions by the Committee can increase awareness and scrutiny of specific violations at the international level. An international peer review mechanism such as the universal periodic review could be employed as a means of highlighting the failure of States to implement decisions under the Covenant.[11]

13. As outlined above, the right to food was once considered a controversial "positive" right, however recent years have witnessed a paradigm shift in terms of the global discourse on the right to food, with progress in jurisprudence and academic deliberations affirming that the right to food is justiciable.[12] With the ratification of the Covenant, the right to food will have greater publicity, especially when NGOs and individuals start to use various remedies. The right to food is now a right than can be legitimately claimed. Complaint procedures remind governments of their responsibility to respect, protect and fulfil the right to adequate food. The Optional Protocol will be influential in ensuring the implementation of the right to food at the international and national level.

III. Recent framework laws, jurisprudence and the justiciability of the right to food

14. The Right to Food Guidelines have done much to raise awareness and increase recognition of the right to adequate food and nutrition as a human right. They have also been instrumental in promoting the importance of recognizing the right to food in national legal frameworks. Guideline 7, in particular, invites States to initiate constitutional or legislative review to facilitate the progressive realization of the right to adequate food in the context of national food security. States are also advised to envisage "administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies accessible, in particular, to members of vulnerable groups".

15. Constitutional provisions and framework laws can be effective means of promoting the progressive realization of the right to food at the domestic level. The adoption of

[9] Riedel, Giacca and Golay (eds.), *Economic, Social and Cultural Rights in International Law* (Oxford University Press, 2014), p. 30.

[10] International NGO Coalition for OP-ICESCR, "A toolkit for action (Booklet 3), Why should States ratify the Optional Protocol on Economic, Social and Cultural Rights?", p. 1.

[11] Ibid.

[12] Jose Luis Vivero Pol, "Hunger for Justice in Latin America: the justiciability of social rights in hungry democracies" (2011).

sectoral legislation will ensure that States adequately address various sectors that impact significantly on various dimensions of food security.

16. Over the last few years, there has been an important increase in the number of States that have adopted provisions containing explicit recognition of the right to food or freedom from hunger.[13] The following section will provide an overview of some recent examples of case law in relation to the justiciability of the right to food at the domestic and regional level.

A. Latin America

17. Latin America has shown itself to be the region of the world that has made the most progress in terms of developing legal frameworks that promote the right to food. With more than eight countries possessing specific laws aimed at promoting and protecting the right to food and a number of bills pending in National Assemblies for consideration,[14] the right to adequate food is also referred to or explicitly recognized in several constitutions, including those of Brazil, Colombia, Cuba, Ecuador, Guatemala, Haiti, Nicaragua and Paraguay.[15] In some cases, the constitutional provisions refer directly to the right to food, and its applicability to the whole population.[16] In other cases, the right is directed at specific groups,[17] while State signatories of the Covenant provide that it be applied directly through the constitution. The following cases are examples of where the right to food has been used as a legal argument to protect social rights.

18. In a 2013 decision,[18] the Constitutional Chamber of the Supreme Court of El Salvador admitted a habeas corpus writ petition against the penitentiary administration in relation to a claimant in detention suffering from diabetes and hypertension. The applicant argued that the failure to provide him with adequate food and an appropriate diet violated his right to health and physical integrity. While the detainee's petition was rejected on the grounds that medical evidence did not support the claim, the case demonstrates the willingness of the court to consider the protection of economic, Social and cultural rights under habeas corpus procedures. The judgment handed down in this case is significant on two counts: firstly, it demonstrates that all human rights are interconnected and indivisible; and, secondly, even though medical evidence was insufficient, the court makes the connection between those suffering from diabetes and their need for adequate and healthy food, which creates an important precedent for future cases.

19. Judicial protection of land as a source of livelihood can be seen in judgments by the Constitutional Court of Colombia. One such significant case involves the community of Las Pavas, whose members occupied unused land in 1997 and began farming activities to feed themselves. Over the years, the community had been repeatedly subjected to various forms of intimidation and harassment, including attacks by paramilitary groups and the destruction of crops and food. A formal eviction order was issued in 2009 at the request of

[13] For a full list, see FAO, *Legal developments in the progressive realization of the right to food* (2014), http://www.fao.org/3/a-i3892e.pdf, or refer to FAOLEX, an online database of national legislation related to food and agriculture (available from http://faolex.fao.org).

[14] Ibid.

[15] Ibid.

[16] Brazil, Ecuador, Guatemala, Guyana, Haiti, Nicaragua, Panama and Suriname.

[17] Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Panama, Paraguay, Peru and Uruguay.

[18] *José Alberto Preza Hernández* v. *Director General de Centros Penales y la Directora de la Penitenciaría Central "La Esperanza"*, Constitutional Chamber of the Supreme Court of El Salvador, decision HC 12-2012 (2012).

two private companies, who claimed ownership of the land. In 2011, the Colombian Constitutional Court delivered its judgment, finding that the actions leading to the eviction of the families of Las Pavas were unlawful and violated the right to a dignified existence, among other rights.[19]

20. In 2013, a coalition of NGOs *Guatemala sin Hambre* engaged in strategic litigation to claim the right to food of children suffering from chronic malnutrition and living in conditions of extreme poverty. The judgements were delivered in April 2013 by the Child and Adolescence Court of the Zacapa Department which, based on the facts, found violations of the right to food, the right to life, the right to housing and the right to an adequate standard of living. Specifically with regard to the right to food, the court grounded its reasoning on article 51 of the Constitution, which protects the right to food for children, as well as on article 11 of the Covenant and article 25 of the Universal Declaration. To define the right to food and the obligations that stem from it, the court cited general comment No. 12.[20]

B. Asia

21. The constitutional jurisprudence of India provides for the justiciability of economic, social and cultural rights based on "the right to life". This constitutional right was central to the case of *People's Union for Civil Liberties ("PUCL")* v. *Union of India*. In mid-2001, public food and employment programmes failed to provide food to deprived people in the impoverished and drought-stricken State of Rajasthan. The Supreme Court of India was petitioned by PUCL to compel the Government to respond to the hunger emergency. In response to the submissions, the Supreme Court held that the right to food was enshrined in the Constitution under the right to life provision in article 47, which requires that the State undertake measures to improve the nutritional state of the population. The Court handed down a series of resolutions which commenced in 2001 requiring State governments in India to implement food distribution programmes for the most disadvantaged. The Court's resolution had a considerable impact on the realization of the right to food in India,[21] and provides an example of the influential role played by the judiciary in encouraging a legislative body to develop human rights legislation.

22. India has led the way, not only at the regional level, but also globally, in terms of developing jurisprudence on economic, social and cultural rights. Its Constitution provides a strong legal framework for the protection and promotion of human rights, with article 47 noting that "States shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties". It has also recently joined a select group of countries that are legally obliged to ensure the distribution of subsidized food grains to its people. With the historic passing of its National Food Security Act in September 2013, India has pledged to provide heavily subsidized food grains to approximately two thirds of its population.[22] The National Food Security Act will amount to the largest food security programme in the world, and aims to reduce malnutrition and improve food security. It also promotes gender-based rights and social inclusion of women, and includes provision for social monitoring and complaint

[19] For more information on Las Pavas case, see www.fian.org/what-we-do/case-work/colombia-las-pavas/.

[20] Ibid.

[21] Christophe Golay, *The Right to Food and Access to Justice: examples at the national, regional and international levels* (FAO, 2009), p. 57.

[22] FIAN India, "The National Food Security Act: A long road towards the realization of the right to food", *Right to Food Journal*, vol. 8, No. 1 (2013).

mechanisms. While the Act has received criticism, particularly owing to its failure to address the nutritional aspect, and for placing too much emphasis on public distribution[23] without tackling the root causes of poverty and hunger, the Special Rapporteur commends Indian efforts to address chronic malnutrition, and encourages India to work with relevant stakeholders to tackle any potential gaps that may prevent this innovative approach from achieving its full potential

C. Africa

23. The following examples illustrate the positive role played by regional human rights mechanisms. In the case *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council* v. *Kenya*, the Endorois, a primarily pastoralist indigenous community, were removed from their lands by the Government of Kenya to establish a wildlife reserve. The African Commission found Kenya to have violated articles 8, 14, 17, 21 and 22 of the African Charter. The Commission noted that, as a consequence of its removal, the community had been "relegated to semi-arid land", which was unsuitable for pastoralism. The ability to graze animals, a key means of subsistence for the community, had become impossible as a result of loss of their land and this threatened the community's survival.[24]

24. In its case *SERAC* v. *Nigeria*, the African Commission held that the treatment by Nigeria of the Ogoni indigenous community violated the right to food implied in the African Charter. In their statement to the African Commission, the NGOs submitting the claim contended that: "the Nigerian government ... destroyed and threatened Ogoni food sources through a variety of means. The government ... participated in irresponsible oil development that poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that ... made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farm lands, rivers, crops and animals created malnutrition and starvation among certain Ogoni communities."[25]

D. Europe

25. While on the whole European countries have been more reluctant to accept the justiciability of economic, social and cultural rights, there have been some significant cases. For example, in the 2012 German Federal Constitutional Court judgment 1 BvL 10/10, the court ruled on whether cash benefits for asylum seekers provided by the Asylum Seekers Benefit Act were compatible with its Constitution. The court relied on earlier decisions to reiterate that the State is under an obligation to ensure a "dignified minimum existence", defined as a "comprehensive fundamental rights guarantee" which includes access to food, clothing, household items, housing, heating, hygiene health and social assistance to persons in need. The benefits awarded to the asylum seekers under the law in question were deemed insufficient to guarantee a dignified minimum existence. The court also reaffirmed that benefits must be calculated on the basis of "real and actual needs" and thus be measured realistically. The court noted that the benefits prescribed under the Asylum Seekers Benefit Act had not increased since 1993, even though the cost of living in Germany had risen by

[23] Ibid., p. 9.
[24] See FAO, *Legal developments in the progressive realization of the right to food* (2014).
[25] See ibid.

30 per cent in that period. As a result, a number of provisions of the act were declared unconstitutional. The court ordered the enactment of new legislation that would ensure a dignified minimum standard of living and introduced a transitional scheme that would provide higher cash benefits in the interim.[26]

IV. Obstacles to justiciability and the right to food

26. While there has been considerable legislative and judicial progress in many countries throughout the world since the adoption of the Right to Food Guidelines (see A/68/288), examples of cases whereby national courts have actually issued rulings on the regulations relating to the right to food are scarce.[27] The only way that the full realization of the right to adequate food and nutrition can be achieved is by ensuring that the rights of victims are protected. Restrictions on justiciability must therefore be prevented. This section will seek to highlight some of the obstacles that continue to hamper progress in this regard.

A. Resistance from some States and lack of political will

27. A rights-based approach to food security is paramount to ensure that the fundamental right to be free from hunger is upheld, with States obliged to do everything in their power to guarantee that everyone has access at all times to adequate, safe and nutrient-rich food in order to lead healthy lives. Yet, despite the fact that the right to food has been enshrined in international law, many States remain reluctant to recognize it and to constitutionalize it as a basic right with justiciable effect.[28]

28. While the ratification of the Optional Protocol to the Covenant represented a significant step in terms of ensuring justice for the victims of violations of economic, social and cultural rights, to date only 15 States are currently party thereto, in comparison with 115 parties to the Optional Protocol to the International Covenant on Civil and Political Rights.[29] This in itself is representative of the fact that many States have failed to develop a judicial culture of recognition in practice, or the necessary legal frameworks required to ensure that the rights enshrined in the Covenant, including the right to food, are justiciable. In some countries, it is the case that international human rights conventions are not considered as formal sources of law and, even where they may be incorporated into national law, these rights may not provide criminal punishment or financial compensations, but rather expresses a moral conviction without legal force.[30] In some States, even when justiciable rights are enshrined in the Constitution, there is a reluctance to acknowledge their relevance. There is also certain reluctance at the regional level, with many European States failing to recognize the direct applicability of the Covenant in domestic law.[31] In Africa, the African Commission on Human and Peoples' Rights provides no option for complaints relating to the violation of the right to food.

29. Accountability at international, regional and national levels is paramount to ensuring that the right to food and its correlative obligations are being implemented. At the domestic level, it is imperative that constitutional principles and framework laws are established as a

[26] For more details on this case see www.escr-net.org/node/364979.
[27] Vivero Pol, "Hunger for Justice in Latin America", p. 14.
[28] Civil Society Synthesis Report, *10 Years of the Right to Adequate Food Guidelines* (2014).
[29] As of June 2014.
[30] Vivero Pol, "Hunger for Justice in Latin America".
[31] Civil Society Synthesis Report, *10 Years*.

means of providing an appropriate institutional structure to ensure the progressive realization of the right to food. In some cases, however, even where States have taken the necessary steps to develop framework laws and policies in order to promote the right to food, a lack of political will has prevented implementation and enforcement of these laws.[32]

B. Lack of awareness and obstacles for rights holders

30. A lack of awareness of legal rights and entitlements, as well as the State's obligations and duties to protect these rights, is a major barrier to achieving the enjoyment of the full range of rights, including economic, social and cultural rights. General knowledge and understanding of judicial and adjudicatory mechanisms as a means of enforcing basic rights is severely lacking in many countries.

31. Access to public information in relation to the adoption of new laws or amendments to existing legislation is crucial for ensuring justiciability. States are obliged to ensure that this information is made readily available and easily accessible for everyone without discrimination. Particular effort should be made to disseminate information in a format that is user-appropriate, taking into consideration the individual needs of persons with disabilities, and those with low levels of literacy. Migrants and minority groups should not be prevented from accessing information owing to linguistic barriers, and materials should be adapted accordingly. Logistical and financial barriers should also be addressed by taking into consideration the difficulties faced by those living in remote rural areas and those living in poverty.

32. Awareness of the right to food and the obligations pertaining thereto need to be heightened amongst rights holders. It is essential that lawyers receive training to enable them to argue effectively for the upholding of the right to adequate food and judges need to acquire the knowledge to grasp and accept such arguments as appropriate. Effective access to legal institutions facilitates the inclusion of marginalized people in the development process, and provides citizens with a means to file actionable grievances against the government for the failure to progressively meet economic, social and cultural rights.

33. Women, in particular, face significant barriers to accessing justice given their subordinate position in many societies, and the lack of information and knowledge about their rights and the ways to claim their protection. Indeed, women in rural areas often are unaware of their legal rights. In many rural areas, sociocultural norms make women fearful of retribution or ostracism if they pursue land claims or seek protection from violence. As a result, women tend to be denied access to justice more often than men, and are also more likely to be denied justice altogether.[33]

C. Institutional and structural barriers

34. In addition to a lack of awareness of their rights, victims of violations face considerable institutional and structural barriers. For many, particularly for those living in rural and remote areas and peri-urban settings, simply accessing a court is in itself a significant challenge. In many countries, municipal courts do not exist and the legal epicentre is located in the capital only, with logistical and monetary implications for those who live beyond the city. In countries where municipal and subnational mechanisms are

[32] Civil Society Synthesis Report, *10 Years*, p. 31.

[33] FAO submission to the Committee on the Elimination of Discrimination against Women, "Rural Women and Access to Justice" (2013), p. 5.

available, a lack of affordable and dedicated legal assistance and judicial corruption often hinders access. In cases where rights holders have the means to submit a case, often ordinary courts, which are more accessible for families facing food security,[34] are unaware of the issue — with the right to food not considered as related to other citizen's rights. Complex and inflexible court systems also have a significant impact on victims, often requiring a high burden of proof for applicants. Some courts may also be averse to accepting collective, or public interest mechanisms or innovative fact-gathering or remedial procedures. In such cases, victims are dissuaded from submitting claims. Some countries, however, have tackled the problem by establishing public interest litigation procedures that authorize individual and collective claims.[35]

35. The role played by judges also has a significant impact on the judicial interpretation of economic, social and cultural rights. In many countries, it is often the case that judges based outside of urban area have little knowledge of human rights law, and are therefore less inclined to consider international standards when making a judgement. The reliance of the judiciary on the State for its legitimacy and the appointment of judges also has considerable influence over the decision-making process, with historical relations between the State and the judiciary often coming into play.

36. Ensuring justiciability of the right to food is also hindered by the fact that individual cases often end up stagnating within the court system amidst protracted, costly and bureaucratic proceedings, while in some instances collective cases influenced by politically motivated activities take precedence and serve as sensationalist media fodder. As a result, many cases have been neglected with no follow-up.

37. Quasi-judicial bodies, such as ombudspersons, have the potential to consider cases of human rights violations. However, more often than not, they tend to focus solely on civil and political rights, with few having taken the necessary steps to introduce complaint mechanisms for economic, social and cultural rights. A general lack of awareness by affected populations that such a mechanism for filing a grievance exists has also done little to encourage applications. However there are some examples of progress in this regard, such as the Ombudsman's Office in Ecuador that took the initiative and established a unit for economic, social and cultural rights, while the *Procuradoria* for Human Rights in Guatemala has been submitting reports on the right to food since 2007, in line with its Food and Nutrition Security Law of 2005.

V. Extraterritorial obligations

A. Economic globalization and right to food

38. The universality of human rights has been the underlying inspiration for all human rights law and standards. While much emphasis has been placed on achieving the universal acceptance of the content of rights, less attention has been given to attaining universality as to the content of obligations.[36] Economic globalization and the increasing involvement of corporate entities in State affairs have challenged the traditional understanding of territoriality of human rights. The powerful influence of transnational corporations

[34] Vivero Pol, "Hunger for Justice in Latin America", p. 20.

[35] Ibid.

[36] Sigrun I. Skogly, "Right to adequate food: national implementation and extraterritorial obligations", in *Max Plank Yearbook of United Nations Law*, vol. 11 (2007), p. 341.

(TNCs)[37] and international financial institutions (IFIs) has led to a marked change in the way in which the principles of territoriality intersect with international human rights standards.

39. Within the food and agriculture sector, approximately ten corporations control and monopolize the commercial seed and global pesticide markets, as well as food retailers.[38] In addition to their financial power, TNCs significantly influence law and policymaking processes both at the international and national level.[39] Similarly, IFIs exercise considerable influence over national decision-making in relation to food and agricultural policies. Many developing countries are compelled to implement projects that jeopardize economic, social, and cultural rights in return for economic and financial aid. In recent decades, there have been significant efforts to alter the policy approach undertaken by IFIs, especially the World Bank, in relation to supporting development projects that have a harmful effect on human rights and the environment. Moreover, bilateral, and regional foreign trade agreements have facilitated the privatization, deregulation and growth of extractive industries around the globe, a development that has had significant impacts on food security and health. Globalization has highlighted and exacerbated socioeconomic disparities throughout the world, with the result that global social inequality is not only expressed in terms of inter-State justice, but as implicating human rights obligations as well.[40] States are often placed in a precarious situation as a result of dubious corporate activities. Developing countries are particularly vulnerable, as in an attempt to attract foreign investors they accept trade rules that adversely impact agricultural policies and follow growth-oriented economic policies to achieve short-term political and budgetary benefits.

40. Development-induced displacement is an increasingly widespread phenomenon with devastating impact. An estimated 15 million people each year are forced to relocate and resettle as a result of such interventions.[41] Despite some of the more recent efforts to highlight land dispossession, as yet global institutions have been unable to discourage the practices and processes that undermine land rights, prevent equitable access and establish the context for large and small-scale displacements.[42] The expanding mining sector has contributed to strong economic growth in some countries, with mining and oil concessions dramatically increasing in countries. The industry has however also generated social conflict in many States, particularly in rural areas, with mining activities coming into direct competition with small-scale agriculture. Indigenous peoples are particularly vulnerable as they are often forced to leave their land and sources of livelihood. A lack of engagement

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[37] See Global Trends, *Corporate clout 2013: Time for responsible capitalism – Executive summary*. Available from www.globaltrends.com/knowledge-center/features/shapers-and-influencers/190-corporate-clout-2013-time-for-responsible-capitalism.

[38] See www.econexus.info/sites/econexus/files/Agropoly_Econexus_BerneDeclaration_wide-format.pdf.

[39] See interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, E/CN.4/2006/97; Jennifer Westaway, "Globalization, Transnational Corporations and Human Rights – A New Paradigm", *International Law Research*, Vol. 1, No. 1 (2012), p. 63 ff.

[40] Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge, Polity Press, 2002).

[41] Penny Green, Kristian Lasslett and Angela Sherwood, "Enclosing the commons: predatory capital and forced eviction in Papua New Guinea and Burma" in *The Routledge Handbook on Migration and Crime* (Abingdon, Routledge, 2014).

[42] Lea Brilmayer and William J. Moon, "Regulating Land Grabs: Third Party States, Social Activism, and International Law", in *Rethinking Food Systems* (2014); Saturnino M. Borras Jr. and Jennifer Franco, "Towards a broader view of the politics of global land grab: rethinking land issues, reframing resistance", *ICAS Working Paper Series No. 001*.

and opportunities for participation in decisions that affect their lives has left many communities in situations of dire poverty and without access to adequate food and nutrition.

B. Extraterritorial obligations of States

41. In recent years the scope of a State's human rights obligations has progressively evolved to include duties to exercise jurisdiction over activities that are connected to one State but have an impact in another. In principle, corporations can also be held accountable either by States responsible for regulating, monitoring and preventing human rights violations; or through intergovernmental instruments or voluntary codes of conduct.

42. Although international human rights law presupposes the consent of a State to establish an obligation, the evolution of human rights has included the extension of duties under international law directly to non-State actors, including individuals and business enterprises.

1. Obligation to respect

43. States should ensure that their policies and practices do not lead to violations of the right to food, either directly or indirectly, for people living in other countries, as well as their own citizens. This obligation is simply the extension of the "no harm" principle of States in international law. The extraterritorial obligations of States in relation to the right to food are referred to in general comment No. 12 which notes that "food should never be used as an instrument of political and economic pressure". States should therefore refrain from implementing food embargoes or similar measures that endanger conditions for food production and water supply, and access to goods and services essential for securing the right to food.[43] Similarly IFIs should also refrain from taking decisions that could lead to potential violations of the right to food in other countries. As multi-State actors, IFIs should be held accountable for human rights violations by other member States that have ratified the Covenant.

2. Obligation to protect

44. The majority of extraterritorial cases derive from the host States failure to fulfil its obligation to protect where private companies are impacting upon human rights. While home States of companies operating abroad have an obligation to clearly set out the expectation that such companies respect human rights throughout their operations, it is the host States which have the primary responsibility to prevent human rights violations, including by TNCs operating within its jurisdiction. However, agreements between TNCs and host governments often limit the host State's ability to perform these duties. Indeed some States have even taken retrogressive steps in this regard. A recent study[44] indicates that some jurisdictions have formulated laws that effectively shield business from being held accountable for human rights violation and make it difficult for victims to obtain an effective remedy. In some instances, States themselves may have been complicit in perpetrating violations. In many cases, however, TNCs also impact positively on a

[43] Committee on Economic, Social and Cultural Rights, general comments No. 12, para. 37, and No. 15 (2002) on the right to water, para. 32. See Ziegler et al., *The Fight For the Right to Food* (Basingstoke, UK: Palgrave Macmillan, 2011), p. 81.

[44] Gwynne Skinner, Robert McCorquodale and Olivier De Schutter, "The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business" (International Corporate Accountability Roundtable (ICAR), CORE and the European Coalition for Corporate Justice (EECJ), 2013).

country's development, the political relevance of which can significantly influence the judicial process.[45]

45. Implementing national legislation is essential to ensuring that States hold TNCs accountable abroad. Indeed, member countries of the Organisation for Economic Co-operation and Development (OECD) have already made voluntary commitments in this regard by developing a code of conduct. The European Union has also developed a resolution for European corporations operating in developing countries. Under international law, however, States are generally not liable for the conduct of non-State actors, unless the non-State actors are de facto agents of the State, or were acting "on the instructions of, or under the direction or control of, that State in carrying out the [wrongful] conduct".[46] To date, there is no international jurisprudence on the issue of home State accountability for TNC actions.

46. Some States have failed to take vigorous steps to ensure that victims have access to judicial remedies for human rights abuses that have arisen extraterritorially owing to the activities of businesses or their subsidiaries. By creating or allowing these obstacles and barriers to remain, States have failed in their duty to protect human rights by ensuring access to effective remedy through the judicial process.[47]

3. Obligation to fulfil

47. Besides being responsible for the activities of TNCs operating abroad, governments have also a duty to support and cooperate in ensuring the fulfilment of the right to food in poorer countries.[48] General comment No. 12 suggests that developing States that do not possess the necessary resources for the full realization of the right to food are obliged to actively seek international assistance, and wealthier States have a responsibility to help (para. 38). The Right to Food Guidelines request that assistance be provided by States in situations of emergency or widespread famine.

C. Holding transnational corporations accountable

1. Interpretative efforts

48. International obligations with extraterritorial dimensions are enunciated in a number of international treaties[49] that emphasize the importance of international cooperation among States to ensure the protection of human rights. At the same time, international human rights instruments refer to how non-State actors have duties to uphold human rights standards. For example, the Universal Declaration of Human Rights states in its preamble — and binding provisions in universal and regional human rights documents also indicate

[45] Ibrahim Kanalan, "Horizontal effect of human rights in the era of transnational constellations: on the accountability of private actors for human rights violations", p. 19.

[46] General Assembly resolution 56/83. See also Smita Narula, "The right to food: holding global actors accountable under international law", *Colombia Journal of Transnational Law*, No. 44 (2006), pp. 752–753.

[47] The Third Pillar case studies include Canada, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States of America.

[48] General comments No. 12, paras. 36 and 37, and No. 15, para. 32. See Ziegler et al., *The Fight for the Right to Food*.

[49] The Charter of the United Nations (arts. 55 and 56); the Universal Declaration of Human Rights (arts. 22 and 28); the Covenant (arts. 2, para. 1, and 11, paras. 1 and 2); the Convention on the Rights of the Child (arts. 4 and 24, para. 4); and the Convention on the Rights of Persons with Disabilities (art. 32).

— duties for private actors, while the Guiding Principles on Business and Human Rights (A/HRC/17/31), endorsed by the Human Rights Council in its resolution 17/4 in 2011, elaborate on the responsibility of business enterprises to respect human rights.

49. Another consideration supporting the necessity of extraterritoriality is the principle of non-discrimination. It is a fundamental part of human rights law, and the logical extension of the universality principle. If States are able to treat individuals in other countries differently from the way they may treat individuals in their own territory, this is discriminatory practice and goes against the principles of universality of rights enjoyment.[50]

2. Judiciary

50. The application of extraterritorial obligations is supported indirectly by the International Court of Justice, in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Court observed that: "while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory".[51] At the regional level the American Convention on Human Rights extends to persons "subject to [the] jurisdiction" of the State party, and the Inter-American Commission on Human Rights held that in relation to the American Convention, "jurisdiction [is] a notion linked to authority and effective control, and not merely to territorial boundaries". The European Court of Human Rights has also indicated that "as an exception to the principle of territoriality, a Contracting State's jurisdiction under article 1 may extend to acts of its authorities which produce effects outside its own territory".[52]

51. There are a number of cases involving TNCs and right to food violations at the domestic level; however, in many of these cases, claims are either based on tort or criminal law rather than human rights legislation, or decisions focus on the involvement of the Government in the violation of rights, and not the company. The case against Nigeria submitted through the African Commission on Human Rights is an example thereof.[53] Another example is the case brought to the Inter-American Commission on Human Rights on behalf of indigenous Guarani people living in the Oriente region in Ecuador against the oil exploitation activities by their own Government and Texaco.[54]

52. There are many relevant domestic court decisions in Brazil, India, Namibia, South Africa and Uganda. Examples can be found also from Australia, Canada and the United Kingdom of Great Britain and Northern Ireland in which TNCs were held responsible under tort law for complicity in human rights violations abroad. In the United States of America, under the Alien Tort Claims Act, TNCs can be held accountable for complicity in the violation of human rights outside of the United States. However, in 2013 the United States Supreme Court in *Kiobel* v. *Royal Dutch Petroleum* case created a most significant barrier to accessing judicial remedies for human rights violations that occur in a host State.[55]

53. In the European Union, the notion of extraterritorial jurisdiction is not as problematic when businesses are domiciled in the European Union. The situation in Switzerland is similar.[56] Barriers exist across all jurisdictions, despite differences in legislation, the approaches of courts, human rights protections at the national level and

[50] Skogly, "Right to adequate food", pp. 341–342.
[51] *I.C.J. Reports 2004*, p. 136, para. 109.
[52] Ibid.
[53] African Commission on Human and Peoples' Rights, *SERAC* v. *Nigeria*, para. 65 ff.
[54] See J.E. Viñuales, "The 'dormant environment clause': assessing the impact of multilateral environmental agreements on foreign investment disputes?", p. 4.
[55] Skinner, McCorquodale and De Schutter, "The Third Pillar", p. 5.
[56] Ibid., p. 6.

legal traditions. These barriers have been overcome in only some instances and, in those cases, usually as a result of innovative approaches adopted by lawyers, the patience of victims and responses by perceptive judges.[57]

54. If TNC activities are criminally justiciable and reasonable compensation is enforceable, the issue of extraterritoriality may not arise. However, in cases of indirect violations of the right to food, for instance by way of voluntary displacement or not being able to farm because of a lack of access to necessary resources such as water because of privatization, or seeds because of a monopoly by TNCs, human rights adjudication becomes vital. Consequently, such remedies should provide enforceable compensation and restitution. The remedies currently available for individuals whose economic, social and cultural rights are violated are somewhat limited. Considerable improvements in this regard are essential for cases involving violations of the right to food to be protected from violations committed by foreign and national actors.[58]

3. Private arbitrations and dispute mechanisms

55. In relation to IFIs, private dispute mechanisms have been developed, including the establishment of an ombudsperson for international finance corporations, as have complaint mechanisms, such as the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and the contact point procedure under the OECD Guidelines for Multinational Enterprises.[59] Under these mechanisms ICSID States and private actors are on an equal footing. The flip side is that corporations are in a position to sue governments.

56. Developing countries are increasingly subject to dispute procedures brought by private companies. For example, high water prices and poor water quality following the privatization of the water supply in the Bolivian town of Cochabamba, culminated in protests against Aguas de Tunari, a subsidiary of the United States firm Bechtel.[60] The Government succumbed to public pressure and reversed the decision to privatize, which prompted the company to bring the Government before ICSID. The case posed the fundamental question of whether the property rights of the company could trump the rights to food and to access water and sanitation. In the end, civil society pressure led to a settlement and, as a result, Bolivian water laws were amended with the 2009 Constitution guaranteeing the right to access to water.[61]

57. Other examples include a lawsuit brought by the Oceana Gold mining company against El Salvador through ICSID for US$301 million for failure to grant a mining permit. It was alleged that the project posed a risk to the country's livelihood. Having failed to change the domestic law to relax regulation, the company initiated arbitration measures to pressure El Salvador into paying for lost exploration costs and future profits.[62] These cases demonstrate how intervention is necessary to prevent democratic rights from being undermined by global norms.

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[57] Ibid., p. 5.

[58] Skogly, "Right to adequate food", p. 355.

[59] Malcolm Langford et al. (eds.), *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law* (Cambridge University Press, 2013), p. 7.

[60] *Aguas del Tunari S.A.* v. *Republic of Bolivia*, ICSID Case No. ARB/02/3.

[61] Andreas Fischer-Lescano and Kolja Moller (eds.), *The struggle for transnational social rights: land grabbing and the right to food* (2014).

[62] International Allies Against Mining in El Salvador, "Call for international support". Available from www.stopesmining.org/j25/index.php/campaigns/2014-international-month-of-action.

4. Permanent peoples' tribunal

58. In recent years, the human rights violations perpetrated by private actors, including those committed by TNCs, have been subject to several Permanent Peoples' Tribunals. Of particular relevance to the right to food are the tribunals on: Agrochemical Transnational Corporations (2001), Neoliberal Policies and European Transnationals in Latin America and the Caribbean (2008), the Role of Transnationals Corporations in Columbia (2006–2008), and Global Corporations and Human Wrongs (2000).[63] Permanent Peoples' Tribunals are only beneficial in raising public awareness of human rights abuses that otherwise cannot be heard. They offer no legal remedy, but are important politically.

5. Extraterritoriality in the United Nations treaty bodies and special procedures

59. United Nations treaty bodies and special procedures have addressed extraterritorial human rights issues in their various reports, including for the universal periodic review and general comments. According to a recent report from the International Network for Economic, Social and Cultural Rights, in the last seven years the various mechanisms of OHCHR have touched upon extraterritorial obligations some 26 times. In so doing, these bodies have played an important role in developing and consolidating an understanding of how to apply the concepts of jurisdiction to the actions and omissions of States.[64] They expressed their concerns and made recommendations on a number of issues addressing extraterritorial obligations, especially on the human rights impact of the exploitation of natural resources in third countries and the role of TNCs in large-scale development projects with respect to forced land evictions, all of which impact directly on the right to food.

60. General comments do not establish legal obligations, but elaborate on the practical implications of those obligations. The treaty bodies, however, have legally binding powers. In February 2013, the Committee of the Rights of the Child adopted general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights to elaborate on the practical implications of those obligations. The Committee also noted that the existing instruments and guidance did not sufficiently address the particular situation and needs of children.[65] The treaty bodies have also contributed to the protection of the rights of groups such as indigenous people and small-scale farmers, whose rights are routinely disregarded by foreign States and private actors based in third countries. Moreover, in recent years a number special procedure mandate holders have sent various communications to States concerning the application of extraterritorial obligations, especially in cases involving allegations of corporate abuse of human rights in host States.

6. Codes of conducts and voluntary guidelines

61. Recent years have witnessed various attempts to regulate the impact of business activities on human rights outside of the territorial boundaries of the home State. Notably the Guiding Principles on Business and Human Rights (2011) underlined that States "should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations" and clarified the responsibility of TNCs and other business enterprises to respect human rights. Similarly The United Nations Global Compact (2000) urges TNCs to respect workers' rights and

[63] See www.tni.org/archives/peoplestribunal-lima.

[64] *Global Economy, Global Rights: A practitioner's guide for interpreting human rights obligations in the global economy* (2014), p. 9.

[65] See Committee on the Rights of the Child, concluding observations on Australia, CRC/C/AUS/CO/4, paras. 27 and 28, and Turkey, CRC/C/TUR/CO/2-3, paras. 22 and 23.

human rights; and the OECD Guidelines call on enterprises to respect human rights. In 2011, a group of experts in international law and human rights adopted the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, which provide that States are responsible for violations of economic, social and cultural rights by non-State actors, including corporations in cases where these non-State actors act under the instructions or direct control of the State, or are empowered by the State to exercise elements of governmental authority.

62. The Guiding Principles are considered the most authoritative statement of the human rights responsibilities of corporations and corresponding State duties adopted at the United Nations level. The Guiding Principles offer a noncommittal voice on extraterritoriality but are rapidly developing and cited in established international standards, such as the revised version of the 2011 OECD Guidelines for Multinational Enterprises and the updated International Finance Corporation Performance Standards; the European Union has also cited the Guiding Principles in its latest Corporate Social Responsibility strategy, and many national governments are recognizing the need to regulate in the area of business and human rights. These rules that place obligations on corporations can develop out of the complex interplay between various States and non-State systems and this multidimensional aspects give them legitimacy.

63. The OECD guidelines' implementation mechanism, the "National Contact Points", emphasize due diligence responsibility for human rights. There have been more than 100 cases to date, in which different human rights organizations had approached the National Contact Points alleging violations of the guidelines by corporations and thus violations of human rights law.[66] The Maastricht Principles are also an example of progressive development efforts of international law. A range of academic experts and non-governmental organizations endorsed the Maastricht Principles in September 2011, and they have been acknowledged in paragraph 61 of the Guiding Principles on Extreme Poverty and Human Rights, which were adopted by consensus by the Human Rights Council (resolution 21/11) in September 2012.

64. All of these mechanisms have the common of preventing and addressing human rights abuse by business enterprises but fail to provide sufficient monitoring mechanisms. The voluntary nature of soft law instruments is generally not sufficient to protect human rights and thus fails to close the existing "accountability gap" of extraterritorial responsibilities.[67] However, one should not be too quick to rule out categorically the legal applicability of such declarations just because they are of a voluntary nature. Law is not limited to what States set forth. Legal norms can also be formed in society. To treat the concept of law as being entirely dependent on the State is to overlook the unique nature of social norms.[68]

65. The legally binding nature of voluntary rules may also emerge with the help of national law. Voluntary standards can often be enforced in accordance with competition or consumer laws, where they include relevant representations to the consumer. Thus, a corporation's non-adherence to its own codes can be enforced before courts in the country of the corporation's headquarters.[69]

66. Transnational campaigns by civil society are also important in developing good practice. For example, Oxfam's "Behind the Brands" campaign called upon TNCs to stop land grabbing. As a result PepsiCo, Coca-Cola and Nestle responded by committing to a

[66] Details available from http://oecdwatch.org/cases.
[67] Smita Narula, "The Right to Food", pp. 752–753.
[68] Langford et al., *Global Justice, State Duties*, p. 61.
[69] Ibid., p. 62.

"zero tolerance" policy within their supply chains in relation to land grabbing and protecting the land rights of rural and indigenous communities.[70] These are important victories, yet monitoring and proper enforcement by the companies is essential to ensure that these committments are upheld.

67. The question of accountability in relation to TNCs and IFIs is still a grey area in international law. However, there has been significant progress on the part of some States, human rights organizations, and even some TNCs in developing guidelines to ensure the protection of human rights and the environment. Providing a uniformly enforced regulatory framework may actually encourage foreign investment in developing countries by levelling the business playing field for ethical corporations. Some companies have begun to recognize the merits of operating under enforceable standards that apply to all their competitors, rather than voluntary standards that only really influence companies with prominent public profiles.[71]

68. Following the unanimous adoption of the Guiding Principles on Business and Human Rights in June 2011, the Human Rights Council subsequently called on all Member States in June 2014 to develop national action plans to further the implementation of the Guiding Principles within their respective national contexts. This development followed similar requests to Member States made by the European Union in 2011 and 2012 and Council of Europe in 2014. However, as of 1 December 2014, only six States have developed and published NAPs on business and human rights: Denmark, Italy, the Netherlands, Spain and the United Kingdom.[72] At the same time, a number of other governments have begun the process of developing national action plans on business and human rights or have publicly announced an intention to do so.[73] The Special Rapporteur congratulates those States which have developed plans and encourages others to do so as a matter of priority. In order to encourage more States, business enterprises and civil society actors to engage in the process, the Working Group on Business and Human Rights on 1 December launched its guidance on national action plans.[74]

69. In June 2014, the Human Rights Council decided to establish an open-ended intergovernmental working group with a mandate "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" (resolution 26/9). It was decided that the open-ended intergovernmental working group would hold its first session in 2015 "to collect inputs … on possible principles, scope and elements of such an international instrument" and that the Chairperson-Rapporteur of the working group should prepare elements for the draft instrument for substantive negotiations at the commencement of the working group's third session.

70. The Special Rapporteur's predecessor, Olivier De Schutter, in a statement of March 2014 underlined that international human rights law has already gone a long way towards recognizing duties of States to regulate the activities of corporations, and that the

[70] Details available from www.oxfamamerica.org/explore/stories/these-10-companies-make-a-lot-of-the-food-we-buy-heres-how-we-made-them-better/.

[71] Langford et al., *Global Justice, State Duties*, p. 7.

[72] See overview of national action plans maintained by the Working Group on Business and Human Rights, available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx; and ICAR and ECCJ, "Assessments of Existing National Action Plans on Business and Human Rights (2014).

[73] Including Azerbaijan, Belgium, Chile, Colombia, Finland, Germany, Greece, Ireland, Italy, Lithuania, Mexico, Mauritius, Morocco, Mozambique, Norway, Portugal, Slovenia, Switzerland, the United Republic of Tanzania and the United States.

[74] See www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

negotiation of a new legally binding instrument is one among many alternative ways through which the fight against impunity for human rights violations could be further strengthened. He also suggested that States cooperate with one another in order to ensure that victims are provided with effective remedies in transnational cases. The Special Rapporteur supports the recommendations made by her predecessor and urges States to consider bringing his proposals to the Human Rights Council for further clarification on the States' obligation in relation to non-regulatory means; to identify best practices regarding cooperation between States; and for the adoption of a resolution to draw attention to the Maastricht Principles. The Special Rapporteur recommends that the Human Rights Council establish a mechanism to explore the feasibility of seeking an advisory opinion from the International Court of Justice to determine the legal obligations associated with the extraterritorial implementation of the right to food. The advisory opinion of the Court would itself have no legally binding effect, however, as the highest international court, it has an interpretative authority with respect to particular legal questions. Legal clarification would increase the influence of voluntary regulatory efforts having the goal of reaching legally binding agreements.

VI. Conclusion and recommendations

71. **The question of justiciability of economic, social and cultural rights has long been debated in the international sphere. States have been reluctant to allow for individual complaint procedures before the Covenant. All human rights are indivisible, and should be protected as such. Economic, social and cultural rights are more than mere aspirations, they are necessary conditions for the stability of the democratic order, and economic power must be subject to democratic control. The newly ratified Optional Protocol is an effort to equalize and operationalize those two categories of rights and empower the justiciability of the economic, social and cultural rights. The Special Rapporteur intends to work closely with civil society and States to promote ratification and use of the Optional Protocol and bring violations to the attention of the Committee on Economic, Social and Cultural Rights as a practical means of eradicating hunger and promoting the right to adequate food. The Optional Protocol has the potential to contextualize and operationalize the right to food at international and national levels. However, we should not be complacent as much remains to be done beyond the scope of the Optional Protocol. Wealthy States not only have moral obligations to address poverty and hunger beyond their borders, they are also legally obliged to do so under international law. International cooperation and development assistance must become the legal norm in an increasingly global world. Despite established duties in a number of human rights documents and voluntary principles, significant barriers and loopholes exist in relation to the extraterritorial application of States obligations in human rights law. A coordinated international response is essential in order to maintain international peace and security and to ensure protection of the most vulnerable in times of economic globalization.**

72. **The Special Rapporteur recommends that States:**

(a) For those that have not already done so, ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as a matter of priority;

(b) Ensure recognition of the justiciability of the right to food by judicial and quasi-judicial bodies at the national, regional and international levels;

(c) Ensure renewed political commitment to the progressive realization of the right to adequate food by adopting policies, constitutional principles and

framework laws that provides an appropriate institutional structure; and sectoral legislation addressing various sectors that impact significantly on levels of food security in this regard;

(d) Provide mechanisms that offer adequate, effective and timely remedies in cases of violations of the right to food, in particular to groups such as communities living in remote rural areas, communities living in situations of extreme poverty, persons with disabilities and indigenous communities, either through collective or public interest remedies;

(e) Ensure the empowerment of women by guaranteeing their basic right to access adequate food and take steps to implement gender-mainstreaming in relation to domestic policies on agricultural, property and inheritance rights;

(f) Ensure that everyone, without discrimination, is afforded access to social protection as a means of offering economic, social, and cultural rights;

(g) Cooperate with civil society organizations to organize training programmes for rights holders and duty bearers in order to operationalize the justiciability of the right to food;

(h) Develop awareness-raising campaigns to ensure that rights holders have access to information pertaining to the right to food and the obligations pertaining thereto;

(i) Ensure policy coherence when implementing national food strategies, paying particular attention to the correlation between trade and investment policies, and economic development plans;

(j) Develop the necessary legal structure in order to protect resources directly related to the right to access adequate and nutritious food, such as water sources, access to land and seed production;

(k) Enable further clarification on States' extraterritorial obligations in relation to non-regulatory means; identify best practices regarding cooperation between States; and adopt within the Human Rights Council a resolution to draw attention to the Maastricht Principles;

(l) Consider requesting an advisory opinion from the International Court of Justice to determine the legal obligations relating to the extraterritorial implementation of the right to food.